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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/550,955	04/17/2000	James Xanthos	2506-005	1674	
75	590 11/21/2002				
Kevin L Pontius Roberts Abokhair & Mardula LLC Suite 1000 11800 Sunrise Valley Drive Reston, VA 20191-5302			EXAMINER		
			WARD, RONALD J		
			ART UNIT	PAPER NUMBER	
,			2685		
			DATE MAILED: 11/21/2002		

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 07-01)

Office Action Summary Continue Continue			Application No.	Applicant(s)	1/0					
- The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Repty A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Elements of time may be available until the provisions of 37 CFR 1.38(a), in no event, however, may a reply the time yet like and some the publication of 37 CFR 1.38(a), in no event, however, may a reply the time yet like and some the publication of 37 CFR 1.38(a), in no event, however, may a reply the time yet like or district the provision of 37 CFR 1.38(a), in no event, however, may a reply the time yet like or district the provision of 37 CFR 1.38(a), in no event, however, may a reply the time yet like or district the provision of 37 CFR 1.38(a), in no event, however, may a reply the time yet like or district the provision of the state yet in the provision of the state yet like the provision of the pro			09/550,955	XANTHOS ET AL.	'					
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A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ③ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Editations of line may be available under the provisions of 37 CFR 1.136(a), in no event, however, may a reply be sirely filled after SIX 6) (ACMTHS from the maining case of this communication. If NO period for reply is appoiled above, the maximum statutory period will apply and will explose SIX (8) MONTHS from the maining date of his communication. If NO period for reply is appoiled above, the maximum statutory period will apply and will explose SIX (8) MONTHS from the mailing date of his communication. Failur to reply which his set or extended period for reply will by statute, cause the application to become ABANDONED (SU SIX C, § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any seamed parent term an aliquetiment. SESTATUS Status Status Status A Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex partie Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1-162 is/are pending in the application. 4a) Of the above claim(s) is/are allowed. 6) Claim(s) 1-162 are subject to restriction and/or election requirement. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Application Papers 9) The proposed drawing correction filed on is/are: a) accepted or b) disapproved by the Examiner. 11 approved, corrected drawings are required in reply to this Office action. 12 The proposed drawing small 20 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * O None of: 1. Certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). *			Ronald J Ward	2685						
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15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121. Attachment(s)	·									
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1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s).	Attachment(s)									
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5) Notice of Informal Patent Application (PTO-152) 6) Other:	2) Notic	e of Draftsperson's Patent Drawing Review (PTO-948)	5) Notice of Inform							

U.S. Patent and Trademark Office PTO-326 (Rev. 04-01) Application/Control Number: 09/550,955

Art Unit: 2685

DETAILED ACTION

Election/Restrictions

- 1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - Claims 1-140, 144-155, drawn to a method and system for measuring data quality of service, classified in class 455, subclass 423.
 - II. Claims 141-143, drawn to a method of conducting commerce, classified in class705, subclass 1.
 - III. Claim 156-162, drawn to a measuring system for measuring data quality of service on a wireless network that includes a WAP gateway, classified in class 709, subclass 224.

The inventions are distinct, each from the other because of the following reasons:

- 2. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case invention I can be used to guarantee varying levels of data quality of service, thus giving customers a wider range of choices in their quality of service.
- 3. Inventions I and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as measuring data quality of service on a wireless network that does not include a WAP gateway. See MPEP § 806.05(d).

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- 4. Inventions II and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case invention III can be used to guarantee varying levels of data quality of service, thus giving customers a wider range of choices in their quality of service.
- 5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
- 6. A telephone call was made to Kevin Pontius at (703)391-2900 on November 20, 2002 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronald J. Ward whose telephone number is (703) 305-5616. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 5:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Urban, can be reached at (703) 305-4385.

Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 2600 Customer Service Office at (703) 306-0377.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(703) 872-9314 (Technology Center 2600 only)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

RJW

November 20, 2002

LESTER G. KINCAID PRIMARY EXAMINER